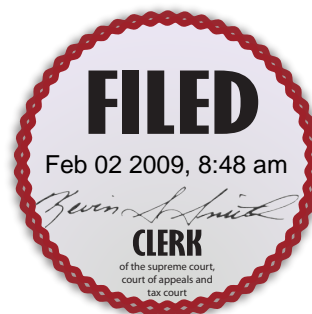


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

BRUCE E. ANDIS
Lebanon, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GARY D. SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JEREMY CHAMBERS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 49A02-0806-CR-572

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No. 49F15-0705-FD-082208

February 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jeremy Chambers appeals his convictions for escape and resisting law enforcement. Specifically, he contends that the evidence is insufficient to support them. Concluding that the evidence proves that Chambers knowingly or intentionally violated a home detention order and forcibly resisted a police officer, we affirm.

Facts and Procedural History

In May 2007, Chambers, who lived on Birchwood Avenue in Indianapolis, was on home detention. According to the “SPECIFIC CONDITIONS OF HOME DETENTION CONTRACT,” Chambers

SHALL be confined **inside** (within the walls of [his] residence: front door to back door) [his] home at all times except when [among other exceptions]:

* * * * *

- C. Attending an **approved** educational program authorized by the Court, the Probation Department, or [his] Community Supervision Manager (CSM) or Home Detention Officer (HDO).

Ex. p. 2.

On May 7, 2007, Chambers called the monitoring center of Marion County Community Corrections and sought permission to attend the Indianapolis campus of Ivy Tech Community College, which is located on Meridian Street, for that week. Tr. p. 25. Chambers requested the hours of noon to 7 p.m. *Id.* at 26.

At approximately 6 p.m. on May 9, Indianapolis Metropolitan Police Department Officer Jason Zotz observed Chambers sitting on a stoop in front of the residence at 921 West Udell Street in Indianapolis. Officer Zotz knew Chambers from previous encounters and radioed fellow Officer Larry Stargel. Officer Stargel then observed

Chambers standing behind the residence. Officer Stargel knew that Chambers was on home detention and should not be in the area. Officer Stargel approached Chambers and told him he was under arrest for escape. Officer Stargel placed Chambers in handcuffs and told him that they were going to move to a more central location to wait for the prisoner wagon.

Officer Stargel then told Chambers to enter the front seat of his patrol car, and Chambers said “No.” Officer Stargel again told Chambers to enter the front seat of his patrol car and then guided him by placing his hands on his shoulders and pushing him down into the car. Chambers again refused and forced himself backwards toward Officer Stargel by using his upper torso. While Chambers was forcing Officer Stargel backwards out of the car, Officer Stargel went ahead and placed Chambers on the ground and maintained control of him as Chambers was trying to escape his grasp. Officer Stargel advised communications that Chambers was resisting, and Officer Zotz responded. At that point, Chambers was successfully controlled on the ground, and the prisoner wagon sped to the scene.

The State charged Chambers with Class D felony escape and Class A misdemeanor resisting law enforcement. At his bench trial, Chambers testified that on May 9, 2007, a friend took him to Ivy Tech so that he could check his grades and try to register for classes. When he was finished, he called his friend to pick him up. Chambers told his friend to “[t]ake [him] home”; however, they “ended up on Udell.” *Id.* at 61. According to Chambers, his friend left his wallet at the Udell Street residence, so they went there first. Chambers testified that he had only been there thirty seconds when

the officers saw him. As for the resisting charge, Chambers testified that he “stood rigid” because he did not want to get in the car with Officer Stargel, fearing that Officer Stargel was going to take him to a remote location and harm him. *Id.* at 66.

The trial court found Chambers guilty as charged and sentenced him to an aggregate term of 545 days, with 180 days executed and 365 days suspended to probation. Chambers now appeals.

Discussion and Decision

Chambers contends that the evidence is insufficient to support his convictions for escape and resisting law enforcement. When reviewing the sufficiency of the evidence, appellate courts must only consider the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it “most favorably to the trial court’s ruling.” *Id.* Appellate courts affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* at 146-47 (quotation omitted). It is therefore not necessary that the evidence “overcome every reasonable hypothesis of innocence.” *Id.* at 147 (quotation omitted). “[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Id.* (quotation omitted).

In order to convict Chambers of Class D felony escape as charged in this case, the State had to prove that he knowingly or intentionally violated a home detention order by

being present in a place he was not authorized to be. Ind. Code § 35-44-3-5(b). Chambers argues that the evidence is insufficient to support his conviction because he could not control where his driver took him after picking him up from Ivy Tech and because the language of his home detention contract does not require him to travel directly to school and back.¹

As highlighted above, Chambers' home detention contract provides that he shall be confined inside his house at all times except when "[a]ttending an **approved** educational program." Ex. p. 2. According to Chambers' home detention officer Shenika Gorden, Chambers had permission to attend Ivy Tech on May 9, 2007, from noon to 7 p.m. However, around 6 p.m. on May 9, Officer Zotz observed Chambers sitting on a stoop in front of a residence on Udell Street, which was neither Chambers' home nor Ivy Tech. After Officer Zotz alerted Officer Stargel, Officer Stargel observed Chambers standing behind the residence. Simply put, Chambers was not attending an approved educational program on Udell Street.

Although Chambers claimed that his friend picked him up at Ivy Tech and they stopped at the Udell Street residence so that his friend could merely pick up a wallet (despite his instructions to take him home), Chambers cannot shift away responsibility. As the trial court pointed out, Chambers lived only a five-minute drive from Ivy Tech. *See* Tr. p. 82-83 ("You told me that you only lived about a 5-minute drive from Ivy Tech

¹ Chambers compares the attending school exception to the exception regarding employment:

A. Working or traveling *directly* to and from **approved** employment; All employment must have a schedule with a fixed location.

Ex. p. 2 (emphasis added).

and I don't think you needed a ride.”). Chambers made the choice to accept the ride and then exit the car at the Udell Street residence when he knew that he was on home detention. Chambers had other options, none of which he took advantage of. For example, he could have stayed in the car, which would have signaled his awareness of the seriousness of his home detention. In addition, the home detention contract spells out what to do in the event of an emergency, that is, calling the monitoring center to explain the situation. *See* Ex. p. 5. Exiting the car and sitting on the stoop of a third party's residence, when you only live a five-minute drive from the school in the first place, is not one of those options. The evidence is sufficient to prove that Chambers knowingly or intentionally violated a home detention order.

In order to convict Chambers of Class A misdemeanor resisting law enforcement as charged in this case, the State had to prove that he knowingly and forcibly resisted, obstructed, or interfered with Officer Stargel while Officer Stargel was lawfully engaged in the execution of his duties as a law enforcement officer. Ind. Code § 35-44-3-3(a)(1). Chambers argues that he did not forcibly resist. A person forcibly resists ““when strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties.”” *Guthrie v. State*, 720 N.E.2d 7, 9 (Ind. Ct. App. 1999) (quoting *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993)), *trans. denied*. Mere passive resistance is not sufficient to sustain a conviction for resisting law enforcement. *Id.*

Here, when Officer Stargel told Chambers to enter the front seat of his patrol car, Chambers said “No.” Officer Stargel again told Chambers to enter the front seat of his patrol car and then guided him by placing his hands on his shoulders and pushing him

down into the car. Chambers again refused and forced himself backwards toward Officer Stargel by using his upper torso. While Chambers was forcing Officer Stargel backwards out of the car, Officer Stargel went ahead and placed Chambers on the ground and maintained control of him as Chambers was still trying to escape his grasp. This constitutes forcible resistance. *See Johnson v. State*, 833 N.E.2d 516, 518-19 (Ind. Ct. App. 2005) (finding forcible resistance where the defendant used physical means to resist the officers by turning and pushing away with his shoulders as they attempted to search him; then, after refusing to enter the transport vehicle, the defendant “stiffened up,” requiring the officers to exert force to place him inside). The evidence is sufficient to support Chambers’ resisting law enforcement conviction.

Affirmed.

RILEY, J., and DARDEN, J., concur.